



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: American Analytical & Technical Services, Inc.

File: B-282277.2

Date: July 16, 1999

Robert J. Martinez, Esq., Williams & Jensen, for the protester.
Kenneth R. Pakula, Esq., Environmental Protection Agency, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly did not reject bids as nonresponsive that failed to include prices for certain contract line items (CLIN) where prices were submitted for all of the sub-CLINs that comprised the CLIN, even though the solicitation suggested that prices should be submitted for the CLINs as well as the sub-CLINs.

DECISION

American Analytical & Technical Services, Inc. protests the agency's actions under invitation for bids (IFB) No. PR-HQ-98-00031, issued by the Environmental Protection Agency (EPA), for laboratory services. American contends that certain bids failed to properly complete the IFB pricing schedule and therefore should have been rejected as nonresponsive.

We deny the protest.

The IFB, issued July 22, 1998, was to procure multiple contractors under indefinite-quantity contracts to provide laboratory services to analyze samples from hazardous waste sites to determine the presence and concentration of certain organic analytes in aqueous and non-aqueous samples. IFB § B.1. As amended, the IFB allowed bidders to bid based on a maximum monthly capacity of 100 samples per month, 300 samples per month, or a combination of both. IFB amend. 3, § B-2. The IFB contemplated the award of 19 1-year contracts with two yearly options, with no more than 3 contracts to be awarded to one bidder, and with 9 of the contracts based on a 100-sample monthly capacity and 10 of the contracts based on a 300-

sample monthly capacity. IFB amend. 3, at 2; amend. 5, at 3, 7. Under the IFB, only bidders who first met the specified qualifications and responsibility requirements were eligible for awards. RFP amend. 3, § L.3, at 11.

To implement the award scheme, the IFB contained price schedules based on a 100-sample per month capacity and on a 300-sample per month capacity. For the 100-sample capacity contracts, the successful contractors were guaranteed a minimum of 75 samples per year with a maximum of 1,200 samples per year, and for the 300-sample capacity contracts there was a minimum of 75 samples and a maximum of 3,600 samples per year. The bid schedules included various contract line items (CLIN), each entitled “Full Sample Analysis,” under which there appeared sub-CLINs for providing “Full Sample Analysis” within various turnaround times. The schedules required bidders to enter a unit price and extended total for each sub-CLIN. For example, the following bid schedule appeared in the amendment No. 5 to the IFB, at 4-5, for the base period 100-sample per month requirement:¹

Base Period					
CLIN NO.	Sample Type	Minimum	Maximum	Unit Prices	Extended Price
0001	Full Sample Analysis	75	1,200	\$	\$
0001A	Full Sample Analysis 21 Days	0	720		\$
0001B	Full Sample Analysis 14 Days	0	252		\$
0001C	Full Sample Analysis 07 Days	0	108		\$
0001D	Full Sample Analysis 72 Hours *	0	108		\$
0001E	Full Sample Analysis 48 Hours **	0	12		\$
Total Base Period \$ _____					
* Semivolatile and Pesticides Only with Full Sample Analysis within 7 days					
** Volatile Organics Only with Full Sample Analysis within 7 days					

¹The bid schedules in the initial IFB did not divide the CLIN and sub-CLINs into a grid for bidding, nor did the original schedule provide spaces where separate prices could be inserted for the CLIN itself.

The IFB advised bidders that the CLIN was designated by a number, e.g., 0001, for which there was a minimum and maximum number of samples; that sub-CLINs designated as 0001A, 0001B, etc. were sub-units of the CLINs; that bidders should bid all or none for the maximum monthly capacity selected; and that the maximum number of samples for each sub-CLIN was included on the pricing schedule for evaluation purposes only. IFB amend. 5, at 3-4.

Twenty-three bids were received in response to the IFB. Fourteen of the bids were eliminated from consideration for various reasons, and the remaining nine bids, including American's, were determined to be responsive and to satisfy the required qualifications.² Agency Report at 3-4. EPA noted that several bidders, including American, had inserted unit and extended prices in the space provided for the CLIN itself, when the agency had not intended that bidders do so. Consequently, on April 2 and 6, EPA advised the bidders whose bids were still being considered that prices were to be submitted for the sub-CLINs only, and requested that the bidders verify their bid prices, based on not submitting prices for the CLINs. Id. at 4 & exh. 42. All of these bidders verified their bids, including American. This protest from American followed.

American protests that EPA is interpreting the solicitation unreasonably in determining that the pricing schedules only required unit and extended prices for the sub-CLINs. The protester contends that bids which did not include a price in the boxes on the CLIN line must be rejected as nonresponsive. American argues that the solicitation, including the revised pricing schedule, can only be reasonably interpreted as requiring EPA to consider bidders' prices for both the CLIN and sub-CLINs as part of the evaluation.³ Further, American argues that bidders, such as itself, who inserted separate prices for the CLIN and sub-CLINs as required by the specifications are prejudiced if the agency considers nonresponsive bids that failed to do so. Protest at 11-16.

In response, EPA explains that it did not add the pricing grid in the amended pricing schedules with the intent of obtaining separate prices for the CLINs, particularly since there is no provision under the contract for ordering a sample analysis with no corresponding turnaround time; instead, according to the agency, the grid was included on the pricing schedules simply to provide an easier format for bidders to use in submitting their bids. Thus, EPA argues that interpreting the pricing schedules to require separate pricing for the CLIN is not reasonable, given that the CLIN by itself does not represent work to be ordered under the contract (because of the absence of a turnaround time), and to include this price would only result in an

²While the agency is continuing to perform pre-award surveys on the remaining bidders, it is withholding making awards pending resolution of this protest.

³Although denied by the agency, American asserts that the contracting officer verbally confirmed American's interpretation of the pricing schedules prior to bid opening.

increase in bid prices, without obligating bidders to perform any additional work. Agency Report at 11-12.

We recognize that the amended bid schedule, by creating a box with a dollar sign in the box on the line identifying the overall CLIN, suggests that a price should be included in that box for the CLIN overall (in addition to the prices for the sub-CLINs). In our view, however, no possible prejudice arose to the protester, and we therefore conclude that there is no basis to challenge EPA's considering bids which failed to write a price in the box on the CLIN line.

It is clear from the IFB (and confirmed by the agency's report and not disputed by the protester) that the analyses ordered will fall under one of the sub-CLINs; that is, every full sample analyses will be ordered with one of the turnaround times specified in the sub-CLINs. The only reasonable interpretation of the pricing grid is thus that the CLIN line is simply the total of the individual CLINs, a point underscored by the fact that the maximum quantities for the sub-CLINs add up to the maximum quantity listed on the CLIN line. Moreover, bids that did not include a price in the box on the CLIN line but did price the sub-CLINs (as all did) obligated the bidders to perform the agency's requirements, and thus did not take material exception to the solicitation requirements; the absence of a price on the CLIN line therefore does not provide a basis to reject the bids as nonresponsive. See Orange Shipbuilding Co., Inc.; Fredeman Shipyard, Inc., B-222384.3, B-222384.4, Sept. 29, 1986, 86-2 CPD ¶ 365 at 3-4.

In any event, all bidders, including the protester, confirmed that their prices for the remaining line items would not change if the box on the CLIN line were left blank. Given the bid verifications, we conclude that all bidders competed equally on these requirements. The only prejudice that the protester has alleged is, not that it would have priced its bid differently if it had understood no prices were to be entered on the CLIN lines, but that it would benefit if the bids that failed to list prices on those lines were rejected as nonresponsive. In the context of this solicitation, we view such a claim of prejudice as wholly without merit.

Under the circumstances, there is no basis to object to the agency's actions under this IFB.

The protest is denied.

Comptroller General
of the United States